

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

07-cr-149-bbc

v.

ELIZABETH CIRVES,

Defendant.

In an order entered on February 17, 2012, I denied defendant Elizabeth Cirves's motion under 18 U.S.C. § 3582. On May 21, 2012, defendant filed a motion for reconsideration which was denied on May 23, 2012. Defendant has filed a notice of appeal, without submitting the \$455 fee for filing her notice of appeal that is required if she is to take an appeal from the denial of a § 3582 motion. Therefore, I construe defendant's notice as including a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not

taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had court-appointed counsel during the criminal proceedings. Therefore, she can proceed in forma pauperis on appeal unless I find that her appeal is taken in bad faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. As I explained in the February 17, 2012 and May 23, 2012 orders, defendant is not eligible for a sentence reduction under § 3582 because her sentence was determined by statute and not by the advisory guidelines. Section 3582 does not give a court the authority to reduce a sentence when the reduction is not the result of a change in the guidelines. Defendant received the mandatory minimum sentence under the governing statutes, 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 851 for her offense. Because she is not eligible for a reduction, I will deny her request to proceed in forma pauperis on appeal.

Under Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court’s denial of leave to proceed in forma pauperis on appeal. Her motion must be accompanied by (1) an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and (2) a copy of this order.

ORDER

IT IS ORDERED that defendant Elizabeth Cirves’s request for leave to proceed in

forma pauperis on appeal is DENIED. I certify that defendant's appeal is not taken in good faith. Defendant has the right to appeal this order certifying her appeal as not taken in good faith.

Entered this 21st day of June, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge